



LOCAL PLANNING ENFORCEMENT POLICY

V.2: SEPTEMBER 2022



VERSION HISTORY

Version	Date	Details
V.1	2010	Created
V.2	01.09.2022	Revised & Updated



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Adopted Policy

This policy was adopted by Tendring District Council on 1st September 2022 as working practice. It is complimentary to the Council's Corporate Enforcement Strategy adopted in September 2017 and replaces the Council's Planning Enforcement Policy dated 2010 and the Enforcement Manual dated July 2008.

Planning Enforcement
Tendring District Council
Town Hall
Station Road
Clacton-on-Sea
Essex CO15 1SE

Tel: 01255 686120

Email: planning.enforcement@tendringdc.gov.uk



1. INTRODUCTION

This Local Enforcement Policy relates to Tendring District Council's Planning Enforcement service. It describes the purpose of the service and how it will be delivered within the Tendring District.

Tendring District Council is a Local Planning Authority and has responsibility to investigate and enforce breaches of planning control where it is in the public interest to do so. The ability to remedy harmful breaches of planning control allows us to protect the quality of life for the people who live, work and visit Tendring, and the quality of the District's built and natural environment.

The decision whether to take enforcement action against breaches of planning control is discretionary and this Policy sets out the Council's policy and procedures for dealing with alleged breaches of planning control including the principles adopted in the exercise of that discretion.

The Policy explains how alleged breaches of planning control should be reported to the Council and also sets out how these will be prioritised, adopting a risk based approach, to ensure that the Council's resources are put to the best use in dealing with the most serious and harmful breaches of planning control. It also explains how alleged breaches will be investigated, and the options available to the Council to take action.

Effective and well-targeted enforcement is essential in promoting fairness and protection from harm, and the Council adopts a positive and proactive approach towards ensuring compliance, helping and encouraging businesses and individuals to understand and meet planning controls, and responding proportionately to breaches. There is significant public interest in the enforcement of planning control and effective enforcement is critical to the Council's reputation.

The Policy is intended to ensure that the public, Councillors and officers are aware of the Council's approach to planning enforcement, and to provide greater certainty for all parties engaged in the planning enforcement service process.

In this document 'enforcement' includes any action taken by the Council aimed at ensuring that individuals and businesses comply with planning regulations. The term 'enforcement' has a wide meaning and applies to all dealings between the Council and those upon whom the law places responsibilities, so can include a range of interventions that seek to achieve compliance. 'Formal enforcement action' refers to the exercise of statutory powers to secure compliance, including but not limited to, the issue of an enforcement notice, a prosecution or injunction.

Trees protected by a Tree Preservation Order or in a Conservation Area, and the display of advertisements are also included in this Policy. The Policy also deals with protected hedgerows under the Hedgerows Regulations.



However there is separate legislation and an application process to deal with issues concerning the impact of high hedges on neighbours and this Policy does not relate to high hedges.

If you have a query concerning high hedges please refer to the following: 'High Hedges – A guide to the new High Hedges Legislation' and 'High Hedges – Criteria for resolving disputes' which are available on the Council website.

The Council will review the content of this document on a four yearly basis, ensuring that the Policy is compliant with National and local planning policy and is kept up to date in terms of good practice.

2. THE PURPOSE OF PLANNING ENFORCEMENT

Planning permission is required for the carrying out of the development of land under the Town and Country Planning Act 1990 (as amended). Development requiring planning permission includes:

- Many types of building works;
- Material changes in the use of land or buildings;
- Some types of engineering operations;
- Mining and other operations.

Planning permission may be granted by the Council on application or by a development order, known as 'permitted development'. The most common type of permitted development is granted under the Town and Country Planning (General Permitted Development) (England) Order 2015 and relates to minor development including house extensions, outbuildings, garages and fences.

Where development is carried out without planning permission, or in breach of a condition or limitation attached to a grant of planning permission, it involves a breach of planning control.

The Council's planning enforcement service is also responsible for the enforcement of other planning controls, including:

- Works to listed buildings
- Protection of trees and hedges
- Control of advertisements



Planning enforcement ensures that breaches which have an unacceptable impact on amenity are dealt with effectively and proportionately.

The government's Planning Practice Guidance, "Ensuring effective enforcement" provides National guidance on responding to breaches of planning control:

Effective enforcement is important to:

- *Tackle breaches of planning control which would otherwise have an unacceptable impact on the amenity of the area;*
- *Maintain the integrity of the decision-making process;*
- *Ensure that public acceptance of the decision making process is maintained.*

Enforcement action cannot be taken where there has been no breach of planning control nor can enforcement action be taken to protect private interests or disputes; it can only be exercised in the public interest.

3. POLICY AND GUIDANCE

Local Planning Authorities have discretion to take enforcement action when it is expedient to do so, having regard to the Development Plan and any other material considerations, including the adopted Local Enforcement Policy and the National Planning Policy Framework. The Government has issued policy guidance on the adoption of Policies and the enforcement of breaches of planning control.

In paragraph 59 of the National Planning Policy Framework ('the NPPF', 2021), the Government advises:

'Effective enforcement is important as a means of maintaining public confidence in the planning system. Enforcement action is discretionary and local planning authorities should act proportionately in responding to breaches of planning control. Local planning authorities should consider publishing a local enforcement plan to manage enforcement proactively in a way that is appropriate to their area. This should set out how they will monitor the implementation of planning permissions, investigate alleged cases of unauthorised development and take action where it is appropriate to do so.'



The government's Planning Practice Guidance document "Ensuring effective enforcement" (2018) advises that the preparation and adoption of a Policy is important because it:

- *Allows engagement in the process of defining objectives and priorities which are tailored to local circumstances;*
- *Sets out the priorities for enforcement action, which will inform decisions about when to take enforcement action;*
- *Provides greater transparency and accountability about how the local planning authority will decide if it is expedient to exercise its discretionary powers;*
- *Provides greater certainty for all parties engaged in the development process.*

In preparing and adopting this Policy, the Council had regard to the Government's recommendations in paragraph 58 of the NPPF and the Planning Practice Guidance on effective enforcement

Local Plan Policy

The Council's adopted 'Development Plan' is fundamental in guiding decisions relating to breaches of planning control. The current Development Plan is the 2021 Tendring District Local Plan 2013-2033 and Beyond and Section 1 was adopted on 26th January 2021.

Section 2 of the Tendring District Local Plan 2013-2033 and Beyond was adopted on 25th January 2022 and provides the statutory framework for planning decisions in Tendring District until 2033. The Local Plan includes a wide range of policies relating to topics including housing, employment, transport, education, heritage and landscape.

For example Policy SPL3 relates to new development and its impact on the character and appearance of the locality.

Human Rights

The provisions of the European Convention on Human Rights are relevant when considering enforcement action. There is a clear public interest in enforcing planning controls in a proportionate way and in deciding whether enforcement action is taken, the Council should have regard to the potential impact on the health, housing needs and welfare of those affected by the proposed action, and those who are affected by a breach of planning control.



Public Sector Equality Duty (PSED)

In making decisions in relation to planning enforcement the Council will have regard to the PSED under section 149 of the Equality Act 2010 (as amended). This means that the Council must have due regard to the need in discharging its functions to:

- (a) Eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Act;
- (b) Advance equality of opportunity between people who share a protected characteristic and those who do not. This may include removing or minimising disadvantages suffered by persons who share a relevant protected characteristic that are connected to that characteristic; taking steps to meet the special needs of those with a protected characteristic; encouraging participation in public life (or other areas where they are underrepresented) of people with a protected characteristic(s); and
- (c) Foster good relations between people who share a protected characteristic and those who do not, including tackling prejudice and promoting understanding.

The protected characteristics are age, disability, gender reassignment, pregnancy and maternity, being married or in a civil partnership, race including colour, nationality and ethnic or national origin, religion or belief, sex and sexual orientation.

4. PRINCIPLES OF GOOD ENFORCEMENT

The Council is committed to following good enforcement practice in accordance with current legislation, guidance and codes of practice, as set out in the Corporate Enforcement Strategy (2017).

In achieving compliance, the Council will work within the principles of good enforcement practice and exercise our regulatory functions in a way that delivers the following qualities:

Service standards

The planning enforcement service standards are published in this Policy to ensure that it is clear what you can expect from the Local Planning Authority responsible for planning enforcement.

Openness & transparency

Information and advice on breaches of planning control will be provided in a timely manner and in plain language and any action which may be required to be taken to remedy the breach. The reasoning behind the decision will be explained, reasonable timescales for compliance set, and clear instructions given on what will happen to the owner/responsible party if they do not comply.



The decision-making process will be transparent to ensure that everyone has confidence in the service. As part of this process of openness we will not usually deal with complaints from an anonymous source. The Council will publish the decision when a case is closed, when an Enforcement Notice is issued or other formal enforcement action is taken.

Personal details will not normally be made available unless the Council is ordered to do so by a Court. Where a party feels intimidated and unable to provide the Council with their name and address, they can alternatively contact their local Councillor or Parish Council and ask them to raise the case without providing your personal details.

Information on planning enforcement will also be published on the Council's website explaining how the public can contact the planning enforcement team and what will be expected from the Council once an enforcement complaint is raised.

Helpfulness

Our aim is to work with all parties to remedy breaches without taking formal enforcement action and if practicable, giving those responsible a chance to rectify matters quickly. We will tell all parties who is dealing with the investigation, how they can be contacted and explain the actions we may take, and if formal enforcement action is taken, inform those concerned of any rights of appeal.

A case reference number is applied to all cases including the initial acknowledgement of complaints. Officers will at all times attempt to make direct contact with the property or site owner prior to taking formal enforcement action and will make themselves known to the site owners/occupiers when visiting the site where this is possible.

Consistency

We will carry out planning enforcement duties in a fair and consistent manner taking into account the particular aspects of each case, with the exercise of individual discretion and professional judgement. When deciding whether to take enforcement action, the Council must always consider meeting the objectives and policies of the development plan, the NPPF and other material considerations to ensure that development does not have an unacceptable impact.

Each decision will also take into account: the particular circumstances of the site and surrounding area; the level of harm being caused, including that to third parties such as adjacent landowners and their amenity as well as any relevant planning history, including previous refusals, planning permissions or appeals.

When necessary, officers will also visit sites outside normal working hours or at weekends to fully assess the impact of unauthorised development. Where appropriate other Council departments may be involved in resolving breaches.

Where there is a wider interest, we will liaise and co-operate with the appropriate agency.



Proportionality:

Enforcement action should be proportionate to the seriousness of the breach, including any harm caused by the breach. Where persons responsible are unwilling to remedy the breach voluntarily, formal enforcement action will be necessary.

Some breaches could cause serious risk to public health and safety, environmental damage or loss of amenity. One of the Council's responsibilities is to protect the public and prevent harm to the environment. We are also committed to dealing with those who deliberately or persistently fail to comply.

Enforcement action will only be taken in accordance with the law and after consideration of the provisions of the European Convention on Human Rights. We will also examine any equalities issues in accordance with our duty under the Equalities Act 2010.

It is important to ensure that the planning enforcement team is fully resourced to undertake the levels of casework presented and it will be essential to use the available resources to maximum effect. In planning terms this means where there is most harm to the public, amenity or the environment.

Enforcement action should focus on the most harmful breaches of planning control. It is not possible to take action against **all** breaches which do not cause significant harm, however alleged harm may also fall under the control of legislation separate to that of town planning and in this regard it is essential that officers work closely with other Council teams to ensure enforcement is fully effective.

Reports of alleged breaches will be prioritised and assessed in accordance with this Policy. Where enforcement action is required, this should be proportionate to the harm and seriousness of the breach although cases where developers or landowners regularly and deliberately flout planning law will be made a high priority.

Accountability

Planning enforcement service standards ensure that members of the public are aware of what to expect from this service. If you are not happy with the way an enforcement matter has been dealt with you can submit a complaint. Details of the complaints process can be found via the following link:

<https://www.tendringdc.gov.uk/council/consultation-contact-and-complaints/how-complain>



5. BREACHES OF PLANNING CONTROL

Many types of development require planning permission before they can be carried out including building works, engineering and mining operations and material changes to the use of land or buildings.

A breach of planning control is defined in section 171A of the Town and Country Planning Act 1990 as:

- *The carrying out of development without the required planning permission; or*
- *Failing to comply with any condition or limitation subject to which planning permission has been granted.*

A contravention of the conditions relating to permitted development rights, under the Town and Country Planning (General Permitted Development) (England) Order 2015, also constitutes a breach of planning control against which enforcement action may be taken.

Examples of breaches of planning control include:

- Erection or extension of a building without planning permission;
- Material change of use of a building without planning permission, for example a house to a shop;
- Development not in accordance with the plans approved by the permission;
- Not complying with the conditions of a grant of planning permission
- Engineering works without planning permission for example, substantial raising of ground levels.

There may also be breaches of other special planning controls (not within the definition of a 'breach of planning control') for example:

- Removal of trees protected by a Tree Preservation Order or trees in a conservation area;
- Demolition or works to a listed building which affect its special interest without listed building consent;
- Display of an advertisement without consent.



Certain minor works may not involve a breach of planning control such as:

- Internal building works – but may require building regulations approval
- Civil matters such as boundary disputes, damage to private property or blocking rights of way
- Fly tipping or rubbish deposited on the public highway
- Adverts which are allowed to be displayed under the advertisement regulations;
- Parking on grass verges or obstruction of the highway is dealt with by the Essex County Council as Highway Authority.

Development or use of a building within 'permitted development' under the Town and Country Planning (General Permitted Development) (England) Order 2015 is not a breach of planning control.

Is a breach a criminal offence?

Most breaches of planning control are not criminal offences but may result in the Council taking enforcement action where this is justified in the public interest. If formal enforcement action is taken it is a criminal offence to fail to comply with the notice.

There are certain breaches of planning control and breaches of other special planning controls that are criminal offences, including:

- Demolition of a listed building or the carrying out of works that affect its special interest without listed building consent;
- Breaches of condition of listed building consent;
- Demolition of an unlisted building in a conservation area without planning permission;
- Felling or unauthorized works to trees protected by a Tree Preservation Order or within a Conservation Area or removal of a protected hedgerow.
- Display of unauthorised advertisements;

Time Limits

If no enforcement action is taken within specified time limits, development can become immune from action. If enforcement action is expedient it must be taken:

- Within 4 years of substantial completion of building works, engineering works or similar operations;
- Within 4 years of an unauthorised change of use of a building to a single dwellinghouse;
- Within 10 years for any other unauthorised change of use of land or building.



In certain circumstances it is possible to take enforcement action after these time limits have expired. For example, in cases of deliberate concealment of a breach of planning control and the deception has not come to light until after the period for taking action has passed.

A Planning Enforcement Order enables the Council to take action against an apparent breach of planning control when the time limit has expired. There is no time limit as to when enforcement action may be taken in respect of the unauthorised demolition of an unlisted building in a conservation area or unauthorised works to a listed building.

6. REPORTING AN ALLEGED BREACH

Breaches of planning control can be reported to the Council by letter, email or by completing the 'Enforcement Complaint Form' form on the Tendring District Council website. Further information and the Enforcement complaint form can be found via the following link.

[Planning enforcement - Who can complain and what we do next | Tendring District Council \(tendringdc.gov.uk\)](https://www.tendringdc.gov.uk/planning-enforcement-who-can-complain-and-what-we-do-next)

Any interested party can also contact us in person or by phone in cases of urgent matters, for example unauthorised works are being undertaken to a Listed Building or protected tree.

Please telephone during office hours on 01255 686120 or email:
planning.enforcement@tendringdc.gov.uk

Where an alleged breach is reported but the web site form is not used, the complainant will be asked to provide the information required before we can investigate further, or they may be asked to complete the form. We will ask the complainant to provide: sufficient information to enable us to prioritise the action to be taken and to give contact details so that we can keep them informed at key stages.

Please note that anonymous complaints will not usually be investigated unless there is sufficient evidence and the alleged breach is serious or readily apparent. Personal details will remain confidential and will not be revealed unless required by law. In exceptional cases we may be required to reveal personal details to the police in connection with an associated investigation.

The complainant can also speak to their local District Councillor, Town or Parish Council, but advising them about their concerns is not a formal enforcement request for an investigation. Councillors, Town and Parish Councils will decide whether they raise a matter with the planning enforcement team, but this will not be logged as a complaint from a member of the public.

The priority given to an investigation is not affected by the source and whether it is received from a Councillor, Town or Parish Council. Whichever route you take, we will need enough information to complete the online complaint form before it is investigated further.



7. PRIORITIES FOR INVESTIGATION

Given the size of the Tendring District and the wide range of planning issues it faces, the Council deals with a large number of enforcement cases.

Because of this, it is not practical to treat every enforcement complaint as a top priority. Therefore to make the best use of its resources to maximum effect in the public interest, the Council will prioritise the investigation of complaints having particular regard to the level of 'harm' being caused by the alleged breach.

The Council has established a set of priorities to reflect the importance it places on the quality of life for its residents and businesses, and the need to protect the special character of the built and natural environment.

The performance standards set for the service are intended to encourage a more proactive approach to enforcement and the Council aims to achieve these standards and monitor progress regularly. The priorities are intended as a set of guiding principles, rather than attempting to take account of all eventualities. Regardless of who has made the complaint, it will be assigned a priority category which then sets a performance standard for the first site visit.

Priority 1

First investigation within 2 working days of receipt of a completed complaint form. This category includes development which could cause irreversible or serious harm if the Council does not act immediately. Examples include:

- Demolition of a listed building or unlisted building in a conservation area.
- Works to a listed building (including development within its setting)
- Removal of a protected tree or hedgerow.
- Use of land which causes serious harm to the locality or the natural environment
- Development which has been undetected and where the time limit for enforcement action will expire within six months.

Priority 2

First investigation within 5 working days of receipt of a completed complaint form. This category includes likely significant public concern or where there is significant immediate harm to the amenity of the area. Examples include:

- Unauthorised development in the Dedham Vale AONB or a Conservation Area.
- Unauthorised development affecting designated sites including SSSIs, Ramsar sites, Special Areas of Conservation or Special Protection Areas.
- Unauthorised development affecting a non-designated heritage asset including a locally listed building.
- Unauthorised development or non-compliance with a planning condition, which is causing immediate and significant harm to the public or amenity of the area.



Priority 3

First investigation within 10 working days of receipt of a completed complaint form. Minor breaches which do not result in significant immediate or irreversible harm or public concern. Examples include:

- Display of unauthorised advertisements and developer directional signs.
- Untidy sites
- All other complaints relating to unauthorised development not falling in any of the above categories.

Priority 4

Complaints which do not involve unauthorised development or other breaches which cannot be investigated by Planning Services where the aim is to provide an initial response within 15 working days of a completed complaint form.

All complaints will be acknowledged within 3 working days and will provide the name and contact details of the officer who will be investigating the complaint.

We ask that for a phone number or e-mail address as we no longer intend to respond via post. Complaints will be investigated according to their priority, within the periods set out above. Wherever possible we will investigate a **Priority 1** complaint on the day of, or the day following, receipt of the request.

After an initial investigation if there is no breach of planning control the complainant will be notified, and the complaint will be closed. Where a breach is found, a harm assessment will be carried out to determine whether or not the matter will be subject to further investigation (see Section 8 below).

Enforcement cases will also be identified via a 'traffic light system' in order to identify the highest priority cases. In other words, cases of very high priority and urgency will be identified as red, less urgent cases amber and cases which are either not urgent or can be investigated under a longer time line identified as green. This ensures that the cases causing most harm and impact can be dealt with expediently.

Progress on cases will also be reported to the Councils Planning Committee on a quarterly basis via a performance report on current caseloads.



8. HARM ASSESSMENT

The decision whether to take enforcement action is discretionary and the Council has limited resources and so a process to assess the degree of harm is carried out to assist in deciding whether it is expedient to take action and how the case should be prioritised.

Following an investigation in accordance with the priorities outlined above, where a breach has been confirmed an assessment will be carried out to assess the degree of harm the breach is causing and determine whether it is in the public interest to take enforcement action.

The Council receives in excess of 350 enforcement investigation requests each year of which almost half are found to involve no breach of planning control whilst the others range from minor infringements to more serious breaches. Where it is decided that enforcement action should not be taken, for example where the breach is minor or results in no significant harm, the case will be closed and the reasons for the Council's decision recorded.

The degree of harm resulting from the breach is graded against a series of planning criteria. The level of harm to take enforcement action is currently a score of 6 and above. These breaches will be pursued by taking appropriate action until matters are resolved, either by negotiation or by taking enforcement action.

A cumulative score of less than 6 or will cause little or no harm to amenity or the environment and it will not be considered expedient to take enforcement action in the majority of cases. In these circumstances the case will be closed and advisory letters sent to the offender and complainant explaining the reasons for the decision. The owner will be advised of the need to rectify the situation, normally by the submission of a retrospective planning application.

Once the complainant and owner have been notified, no further action will be taken unless circumstances change or new evidence is received although this. This will not apply to those cases with a harm score of less than 6 where agreed by the authorised officer.

In cases where it is considered that the breach would not receive planning permission the enforcement action will be pursued to a successful conclusion.

A Harm Assessment will be applied to all cases involving alleged breaches of planning control. The harm assessment form sets out various planning "harm" factors dealing with the nature of the breach, policy matters, safety issues, degree of harm, etc.

Cases involving Advertisement Control, Amenity Notices and Tree/Hedgerow matters have different legislative requirements and are dealt with separately.

The harm assessment form should be completed within 20 working days of receipt of a complaint. Where the breach relates to a change of use of land the site should be visited on at least 2 occasions during that twenty day period (if necessary) to confirm whether a breach of planning control is occurring.



The result of the harm assessment by the twentieth day will allow the decision on “harm” to be incorporated in the 21 day update letter sent to complainants to inform them of the investigation findings and proposed action.

Harm assessment provides for a quantitative and qualitative assessment to be made which is open, quick and effective. The criteria and scoring enables breaches of planning control to be assessed and for the prioritising other breaches of planning control.

The effectiveness of the Harm Assessment form will be assessed every six months to ensure that the scoring system provides an accurate guide for officers in assessing case priorities. Amendments can be made to ensure that the system robustly identifies cases for future action.

9. MATERIAL CONSIDERATIONS

Planning enforcement operates to protect the public rather than the private interest and certain factors should **not** be taken into account when assessing an alleged breach of planning control, such as:

- loss of value to property
- loss or trade or increased competition with other businesses
- loss of view
- breach of covenants
- land ownership disputes

When considering whether it is expedient to take enforcement action, the Council should have regard to the development plan and any other material considerations, including the adopted Local Enforcement Policy, the government’s National Planning Policy Framework and planning practice guidance.

Those planning considerations which **are** material include:

- Overlooking/loss of privacy
- Loss of light/overshadowing
- Parking provision for development
- Highway safety
- Noise, dust and fumes
- Impact on listed buildings and conservation areas
- Layout and density
- Drainage and flood risk
- Design, appearance and materials
- Impact on character and appearance of the area
- Loss of trees
- Planning history (including appeal decisions)
- Impact on landscape and nature conservation
- Archaeological impact



Harm can result from a breach of planning control that has various adverse impacts including those on residential amenity; highway safety; flood risk; damage to the historic environment, archaeology, conservation areas; the natural environment including protected species, designated landscapes and habitats. Unauthorised development which undermines the policies of the development plan, or could set a precedent which, if repeated, would undermine the policies of the development plan.

If the unauthorised development would have been permitted, had a planning application been submitted, it would be unlikely to be expedient to take enforcement action. A fundamental principle is that taking enforcement action must be in the public interest.

Other planning controls

There are other specific planning controls relating to the protection of trees, hedges and advertisements. Planning enforcement is also responsible for:

- Statutory powers for the control of works to listed buildings
- Protection of trees subject to Tree Preservation Orders or within Conservation Areas
- Control of advertisements
- Protection of hedgerows

Breaches which have an unacceptable impact on amenity will be dealt with effectively and proportionately. However it should be recognised that enforcement action will not be taken simply because a breach has occurred. It should be demonstrated that the breach results in harm which underlines the need to undertake an assessment of the degree of harm.

No Breach and No Further Action

After undertaking an investigation in many cases it may be decided that no further action is appropriate. This may be because the breach is relatively minor and does not cause material harm or because there has been no breach of planning control. Alternatively, the works may be 'permitted development' which can be carried out without planning permission. The details of what is 'permitted development' are set out in the Town and Country Planning (General Permitted Development) (England) Order 2015).

Similarly, it may be decided not to carry out an investigation, even if there is a clear breach of planning control, because it is not 'expedient' to take action. This might be because the breach does not cause any material harm and formal action would not be in the public interest. In reaching such a decision the harm must be balanced against the likely success of any formal action, the availability of resources, and other cases which might be causing a greater level of harm but whose progress might be delayed as a result.



Certain advertisements do not require Advertisement Consent because they are exempt from control or have “deemed” consent under the Town and Country Planning (Control of Advertisements) Regulations 2007.

Unauthorised advertisements are assessed in terms of their harm to amenity and/or potential danger to highway safety and it may be decided not to take action against advertisements or signs which are not harmful or dangerous.

The timescale to resolve an enforcement investigation varies depending on a range of factors:

- Nature of alleged breach;
- Harm being caused
- Extent of investigations
- Planning history
- Tracing ownership
- Need to carry out more than one visit
- Problems gaining access
- Resources available.

Where an Enforcement Notice is issued there is a right of appeal to the Secretary of State which can add significantly to the overall timescale. Therefore, it is not possible to give an average time for resolving an investigation. Complainants should be kept informed throughout the process both in writing at key stages and via our website where progress is monitored for each investigation.

To help meet these targets the Council has delegated certain powers to officers including whether to take enforcement action. This allows decisions to be made without having to refer matters to Committee. The reasons for taking any decision will be made clear to all parties.

10. TYPES OF ENFORCEMENT ACTION

When a complaint has been investigated and it has been established that there has been a breach of planning control, there are a number of options available to resolve the breach, although not all options will be suitable in each case.

Planning Contravention Notice (PCN)

The PCN enables Local Planning Authorities to obtain information about a suspected breach of planning control. It sets out a list of questions about the development or activity to establish whether a breach has occurred. The Council can offer a meeting to allow additional information to be provided. It is an offence not to comply with the requirements of the notice within the period set for its return or to make false or misleading statements.



Section 16 Notice (Local Government (Miscellaneous Provisions) Act 1976)

This is primarily intended to establish information about ownership and other interests in the land. It is an offence to fail to comply with the requirements of the notice within the period set for its return, or to make false or misleading statements in reply.

Section 330 Town and Country Planning Act 1990

The Council can use this Act to obtain information, usually at an early stage of the enforcement process. It involves serving a Notice on occupiers of premises and/or person(s) receiving rent. It is an offence to fail to comply with the requirements of the Notice within the period set for its return, or to make false or misleading statements in reply.

Breach of Condition Notice (BCN)

The Council can serve a BCN on the developer or occupier if they do not comply with conditions imposed on a planning permission. There is no right of appeal against a BCN and failure to comply within the specified period is a criminal offence allowing the Council to take legal action.

A BCN can only be used to secure complete compliance. It does not apply to breaches of control relating to listed buildings, advertisements or protected trees. The Council can use this procedure in preference to issuing an Enforcement Notice, where appropriate, however the penalties for non-compliance may be lower than if an Enforcement Notice is used to deal with the breach of condition.

Enforcement Notice

The Council may serve an enforcement notice when it is satisfied that there has been a breach of planning control and it is appropriate to take action. With an enforcement notice, the recipient must take the specified steps within a specified time period of at least 28 days.

Failure to comply with an enforcement notice is a criminal offence. The recipient of a notice has a right of appeal to the Secretary of State through the Planning Inspectorate. An appeal suspends the effect of the notice until it is determined. If the recipient lodges an appeal, the Council will let the informant know how they can make representations to the Planning Inspectorate. Representations will be available for public inspection.

Stop Notice

The Council can serve a Stop Notice with an Enforcement Notice where it considers that continuing unauthorised development is causing significant harm. The Stop Notice continues to take effect even if an appeal is lodged against the Enforcement Notice. The Stop Notice does not usually come into effect until three days after it is served, although this can be reduced if necessary. Work must stop immediately the Notice comes into effect.



There are compensation liabilities if the Enforcement Notice is quashed, but these are not related to the planning merits of the case. There is no right of appeal and failure to comply with the notice is an offence.

Temporary Stop Notice

Where there has been a breach of planning control, immediate action can be taken to safeguard the amenities of the area by a temporary stop notice. This differs from a normal Stop Notice as it has immediate effect and does not have to be accompanied by an Enforcement Notice but a Temporary Stop Notice only lasts for 28 days. There is no right of appeal but judicial review can challenge the decision to issue the notice.

Injunction

The Council can apply to the County Court or High Court for an injunction to stop an actual or imminent breach of planning or listed building control, even when the identity of the person is unknown.

An injunction can be sought whether or not other enforcement action has been taken. Failure to comply with an injunction can be contempt of court and can lead to an unlimited fine, confiscation of assets or imprisonment.

Section 215: Untidy Site Notice

Under Section 215 of the Town and Country Planning Act, 1990 the Council has powers to require an owner/occupier to maintain land or buildings if their condition causes harm to the amenity of an area.

In assessing the harm, consideration will be given to the appearance of the site and the impact on the amenities of the surrounding area. The Council will decide whether the extent of any harm to amenity of the area justifies the service of a Notice requiring the proper maintenance of land.

A Section 215 Notice will specify what steps the owner must carry out to improve the site to secure an improvement in its appearance in order to avoid further action or prosecution. The owner has a right of appeal to the magistrate's court but failure to comply with the notice is an offence. The Council may also carry out the works in default and recover the cost from the owner.

Section 215 Notices may be appropriate in connection with a prominent and derelict site, particularly if it has started to attract fly-tipping, or where an important town centre street frontage has fallen into disrepair, particularly if it is within a Conservation Area. The Council may also serve a Notice where the condition of land impacts upon the wider landscape, particularly if it is in an area of countryside which is noted for its landscape value or natural beauty.



If a residential property is in a dilapidated condition due to lack of proper maintenance over a long period, or the garden is overgrown with domestic waste or there abandoned vehicles left in the garden, an Untidy Site Notice may be an appropriate remedy.

However gardens which are merely neglected or a house that needs some cosmetic maintenance may not generally qualify for a Section 215 Notice. As with other enforcement investigations, the Council will allocate resources where they can be most effective and where the greatest harm is being caused. It will not use these Notices where there are other more specific and applicable powers available to address the concern.

A Section 215 Notice will specify the steps required to maintain the land and buildings to a satisfactory standard. The scope of works which can be required may include making the site secure, undertaking external repairs, replacing roof tiles, repairs to guttering, repairs to doors and windows, redecoration, removing waste, and cutting back overgrown vegetation. Works which require planning permission, for example the re-building of a garage or extension fall beyond the scope of a Section 215 Notice.

The owner will be notified before serving a Section 215 Notice advising that formal action will be taken unless the appearance of the site is improved. Where no action is taken by the owner and a Notice becomes effective but is not complied with, the Council may:

- Prosecute in the Magistrates Court. A successful prosecution may result in a fine of up to £1,000 and a criminal record.
- Direct action: carrying out the required steps in default and the costs incurred recovered from the owner. Where the costs cannot be recovered a charge on the property can be registered with the Land Registry, thus assuring full cost recovery plus base-rate interest.

The course of action will vary from site to site, and in some cases both direct action and prosecution may be appropriate. Where the costs cannot be recovered a charge on the property will be registered with the Land Registry, thus assuring full cost recovery plus base-rate interest.



11. COMPLAINTS ABOUT YOUR DEVELOPMENT

In many cases a breach of planning control is not intentional and can be the result of a misunderstanding or being unaware of the planning requirements. Therefore, if you receive a letter from the Council or a visit is made by an Enforcement Officer, you are encouraged to respond positively and provide the information needed to resolve the matter.

It is beneficial to all parties if a breach is addressed at an early stage. If it is possible to investigate the concerns without disturbing you and establish that there is no breach of planning control, there will be no need to contact you.

Depending on the level of harm caused, the Council will discuss what alternative solutions might be acceptable, rather than the complete removal or rebuilding of the development. However, this does not mean that you can delay any action that you have agreed to do.

You will be expected to respond within the stated timescales and the Council may prosecute for failing to respond to formal notices. Protracted negotiations which delay taking action to rectify the breach will not be encouraged. In many cases, particularly where the works are likely to be acceptable, perhaps with some minor changes, there will be an opportunity to submit a retrospective application. This will enable the development to be considered in more detail and, if appropriate, control it through planning conditions.

You should be aware that development which requires, but does not have, planning permission is unauthorised and remains subject to potential enforcement action for a set number of years.

In the case of building works, or the use of a building as living accommodation, the time period is 4 years after completing the works or occupying the accommodation. Where the breach is an unauthorised change of use of land or buildings, or breach of a planning condition, the time period is 10 years.

If you subsequently wish to sell a property which has been subject to unauthorised works or a change of use, the sale could be delayed or lost as a result. Mortgage providers are normally made aware of breaches of planning control and will be sent a copy of any formal notice or decision about planning enforcement. The Council's Local Land Charges section will be advised where formal notices have been served, and where potential enforcement action remains outstanding.

Enforcement officers will make themselves known to the landowner/occupier if they are present when they enter a site, but it is not always possible to give prior notice.



Enforcement officers are legally entitled to enter land to investigate suspected breaches of planning control. You do not have to be present when an enforcement officer makes a site visit nor are officers required to give notice of entry unless admission to any building used as a dwelling house is necessary, in which case 24 hours' notice must be given to the occupier of the building. If an officer is prevented from entering land or buildings (which includes no reply being received to a request being made by the Council for admission, within a reasonable period) the Council can apply for a warrant to enter the land/or buildings and any obstruction or refusal of entry is a criminal offence.

The information from a site visit will be used to assess the harm being caused and what further action may be required. Allowing the enforcement officer to make a site visit and take photographs will help to reduce delays and any potential inconvenience. A senior officer then makes the decision to serve a formal notice with the recommendation of the enforcement officer.

Enforcement officers can explain the different notices and help you understand the implications. However, they will not act as your advisor and cannot make decisions on your behalf. You should consider whether you wish to get your own independent advice from a planning consultant or other property professional. If you cannot afford to employ a consultant you may wish to contact Planning Aid which is a voluntary service which offers free independent, professional advice (see contacts below).

11. LISTED BUILDINGS

Listed Building Enforcement Notice

Where there has been a breach of listed building control, such as unauthorised works which affect the special character and appearance of a listed building, a Listed Building Enforcement Notice can be issued.

The recipient must take the specified steps within the Notice within a set time period. Failure to comply with a notice is a criminal offence. The Notice will usually specify work required to remedy the breach of control which may include a requirement to restore the listed building to its condition immediately prior to the unauthorised work.

The recipient has a right of appeal to the Secretary of State through the Planning Inspectorate within 28 days. An appeal suspends the effect of the notice until it is determined. If the recipient lodges an appeal, we will notify neighbours of the appeal and how they can make representations to the Planning Inspectorate.



Listed Building Prosecution

Unlike standard enforcement notices the Council may commence Court proceedings for unauthorised works to a listed building without the need to serve formal Notices. These proceedings may include a prosecution or a formal caution.

This is a formal process where the offence is formally admitted and may be referred to at the sentencing stage. If you are found guilty of a subsequent offence it may also be taken into consideration when deciding whether to prosecute at a later stage for another similar offence.

In order to bring a successful prosecution it must be proved that:

- the building is listed;
- there has been a breach of a formal notice if one has been issued
- you have carried out, caused, or permitted the works
- the works were carried out without consent
- the works were not exempt

Warning

It should be noted that in serious cases, the Magistrates' Court and the Crown Court, in addition to substantial fines, have the power to impose custodial sentences on offenders carrying out unauthorised work to a listed building. You are advised to discuss the need for planning permission and/or listed building consent with the Council before carrying out any works to a listed building. Contractors and workers may be at risk of prosecution as well as owners or occupiers.

12. ADVERTISEMENT CONTROL

It is a criminal offence to display an advertisement without Advertisement Consent or Deemed Consent although there is an exception for certain exempt advertisements such as road signs.

Where an advertisement is considered to be illegal or harmful the advertiser will be advised to remove it within 14 days. In certain cases the period for removal may be shorter, for example where the advert is a danger to road safety. Adverts on a listed building will often need listed building consent as well as advert consent and the advertiser may be advised to remove it within a shorter period if it is causing harm to a listed building.

The content of an advert is not usually a material consideration but it could be a factor in reducing the timescale for removal of illegal adverts which are offensive. Lawful adverts on legal advertising sites may still give offence which is a matter for the Advertising Standards Authority rather than the Local Planning Authority. An example might be an advert on a bus shelter near a primary school for a particularly violent or explicit film. A link to the Advertising Standards Authority web site appears at the end of this Policy.



Where prior warnings are ignored and an advertisement remains on display, legal proceedings can be taken in the form of a prosecution and a formal caution. In order to bring a successful prosecution it must be proved that the advertisement did not have the required Consent, Deemed Consent or an exemption and was therefore illegal. It must also be proved that the advertisement was displayed on the date of the offence. Each day on which an advert is displayed whilst being illegal gives rise to a separate offence.

The Council will work with Essex County Council as Highway Authority to remove unauthorised advertisements on the highway under the Highways Act 1980. Advertisers may be charged a fee (currently £40) for the return of adverts which are removed. The advert should not be replaced and if it is it may be confiscated.

13. PROSECUTION

The Council may commence legal proceedings where a formal notice has been breached. In some cases legal proceedings can be taken against unauthorised works without the need to serve any formal Notices, for example unauthorised works to a listed building, a protected tree, or an unauthorised advertisement. These proceedings can include:

- Prosecution
- Formal caution

Formal caution is process where the offence is admitted. It may be referred to at the sentencing stage if the offender is ever found guilty of a subsequent offence. It may also be taken into consideration when the Council decides whether or not to prosecute at a later stage for a similar offence.

In order to bring a successful prosecution, the Council will need to prove that:

- A building or tree was protected;
- Someone has breached a formal notice (Listed Building);
- Someone has carried out, caused, or permitted the works
- The works were carried out without consent
- The works were not exempt

The Council will apply two tests in cases where a prosecution appears likely in consultation with its legal advisors:

The Evidential Test:

The Council will not start a prosecution unless there is sufficient admissible and reliable evidence that the offence has been committed, and there is a reasonable prospect of conviction.



The Public Interest Test:

The Council will only bring a prosecution where this is in the public interest. It may apply cautioning in cases where a prosecution can properly be brought, but where it is not considered such action is appropriate in the circumstances of the case. Cautions will be used in accordance with Home Office guidance. People who have previously received a formal caution will normally be dealt with by prosecution.

14. PROTECTION OF TREES

Trees which are subject of Tree Preservation Orders or trees within Conservation Areas are protected by planning legislation. In general, authorisation is required from the Council before you do any work. This includes cutting down, uprooting, lopping or topping a protected tree. It is a criminal offence to wilfully damage or destroy a protected tree. .

Hedgerows which are ancient and within the scope of the Hedgerows Regulations are also subject to special protection. The removal of a protected hedgerow may be a criminal offence. Anyone who contravenes the Hedgerow Regulations may be prosecuted and liable to a fine of up to £2,500 if convicted.

Any proceedings for these offences must be brought within six months of the date the offence was committed. In prosecuting we will need to decide if:

- The tree or hedgerow was protected;
- You have carried out, caused, or permitted the works
- The works were carried out without consent
- The works were not exempt

When a protected tree is damaged or destroyed two offences may apply:

- Anyone who cuts down, uproots or wilfully destroys a tree, or who lops, tops or wilfully damages it in a way that is likely to destroy it, is liable, if convicted in the Magistrates Court, to a fine of up to £20,000 (the fine is unlimited if there is a trial in the Crown Court). The Courts have decided that it is not necessary for a tree to be obliterated for it to be “destroyed”, it is sufficient for the tree to have been rendered useless as an amenity.
- Anyone who carries out unauthorised works to a tree which are not likely to destroy it is liable, if convicted in the Magistrates Court, to a fine of up to £2500.



Investigations

The initial investigation will involve a site visit to establish:

- Whether the tree is protected;
- Whether any consent has been granted; and
- Who is carrying out the work.

Unauthorised works to Trees

As with planning enforcement complaints, officers investigating unauthorised works to protected trees have rights to enter land to carry out investigations and will take photographs which may later be used as evidence.

The property owner/occupier will have an opportunity to give their version of events during the investigation. However, if it appears that they did carry out the works then a caution will be given under the Police and Criminal Evidence Act 1984 because it may involve a criminal offence.

If trees are removed through unauthorised works (or because they are dead, dying or dangerous) the onus is on those carrying out the work to prove that the tree was in such a condition to warrant its removal. The landowner has a duty to plant a replacement tree of a suitable size and species in the same position as soon as reasonably possible (unless the Council waives that requirement). The replacement tree is then subject to the same protection as the tree that was removed.

The Council can serve a Tree Replacement Notice within a period of four years to ensure the landowner complies and there are rights of appeal against Tree Replacement Notices.

Whether to take action

The Council will decide what action to take in cases of unauthorised works on trees based on the public interest test and each case will be considered on its merits. The Council would not normally prosecute unless the unauthorised works have resulted in a loss of public amenity. In most cases, prosecution will not be pursued if the Council would have granted consent (or raised no objection) for the works if they had been properly applied for.

In considering whether to bring a prosecution, the Council will have regard to the likelihood of the offence being repeated and the degree to which a prosecution would act as an effective deterrent. It will also have regard to any financial advantage perceived to have been gained by carrying out the unauthorised works, and whether prosecutions, cautions or warnings have been issued to the offender for similar offences in the past. The Council will take into account any expression of regret, helpfulness and co-operation with the investigation and any evidence that the offender was acting in good faith.



The Council will normally require the planting of replacement trees, irrespective of a prosecution or caution. When replacement planting is required, the situation will be monitored to make sure it is undertaken. If necessary the Council will serve a Tree Replacement notice to secure replacement planting, which can be invoked if the landowner does not voluntarily carry out replacement planting.

CONTACTS AND FURTHER INFORMATION

You can contact the Council's planning enforcement team at the following address:

Planning Enforcement
Tendring District Council
Town Hall
Station Road
Clacton-on-Sea
Essex CO15 1SE

Tel: 01255 686120

Email: planning.enforcement@tendringdc.gov.uk



Further Information

Department for Levelling Up, Housing and Communities

(The Government Department with overall responsibility for planning)

<https://www.gov.uk/government/organisations/department-for-levelling-up-housing-and-communities>

Planning Inspectorate

(The independent body responsible for planning and enforcement appeals.)

Registry/Scanning,
Room 3/01, Kite Wing,
Temple Quay House,
2 The Square,
Temple Quay,
Bristol, BS1 6PN.

www.planning-inspectorate.gov.uk/pins/index.htm

Planning Portal: Is the Government's online planning resource where you can learn about the planning system and research the latest government policy.

[Planning Portal](http://www.planningportal.gov.uk)

Planning Aid: Provides free, independent, professional town planning advice to communities and individuals who cannot afford to pay planning consultant fees.

Planning Aid
PO Box 37,
Freshwater,
Isle of Wight, PO40 9ZR

Phone: 0207 929 8338

info@planningaid.rtpi.org.uk



National Policy and Guidelines:

National Planning Policy Guidance (2021)

Planning Practice Guidance (2018)

[Planning practice guidance - GOV.UK \(www.gov.uk\)](https://www.gov.uk/guidance/planning-practice-guidance)

Town and Country Planning (General Permitted Development) (England) Order 2015,

Enforcement Concordat, published by the Department for Trade and Industry

[\[ARCHIVED CONTENT\] \(nationalarchives.gov.uk\)](https://www.nationalarchives.gov.uk/doc/enforcement-concordat/)

RTPI | Planning Enforcement Handbook for England

<https://www.rtpi.org.uk/practice/2020/may/planning-enforcement-handbook-for-england/>

Advertising Standards Authority

[Home - ASA | CAP](https://www.asa.co.uk/)

High Hedges

Information and guidance on High Hedges and how to make a complaint can be found on the Council's website via the following link.

[High Hedges | Tendring District Council \(tendringdc.gov.uk\)](https://www.tendringdc.gov.uk/high-hedges/)